

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

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THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1632 of 2016
and C.M.P.No.8822 of 2016

1.K.Shanmugam

2.K.Kesavamurthy

... Petitioners

Vs.

A.Rajeswari

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.563 of 2015 in O.S.No.234 of 2008 dated 20.01.2016 on the file of the III Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.R.Bharath Kumar

For Respondent : Mr.K.S.Karthik Raja

ORDER

Challenging the fair and final order passed in I.A.No.563 of 2015 in I.A.No.1029 of 2013 in O.S.No.234 of 2008 on the file of the III Additional Subordinate Judge, Coimbatore, the defendants 2 & 4 have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.234 of 2008 for partition.

3.The trial Court passed a preliminary decree, allotting one-fifth share to the plaintiff. Pursuant to the preliminary decree passed in O.S.No.234 of 2008, the plaintiff filed her final decree application in I.A.No.1029 of 2013. In the said final decree application, the defendants 2 & 4 filed an application in I.A.No.563 of 2015 under Order 26 Rule 10 A and 10 B of the Civil Procedure Code to appoint an Advocate Commissioner to take the original diary marked as Ex.R1 to a Government Handwriting Expert for comparison of the entries acknowledging the receipt of payments by the respondent with the admitted signature and the handwriting of the respondent found in Ex.C1 to obtain an Expert opinion.

4.In the affidavit filed in support of the petition, the defendants have stated that the respondent with the connivance of her husband and sons had played fraud on them and has acted contrary to the terms of compromise and committed breach of trust. Further, they have stated that they have summoned the written reply given by the respondent before the B4 Police Station and the same has been marked as Ex.C1 in the final decree

proceedings. That apart, the defendants have also stated that in Ex.C1, the respondent has affixed her signature and also written her mobile number in her own handwriting. Ex.R1 is the entries made in the diary by the respondent. According to the defendants, the respondent had received a total sum of Rs.7,00,000/- from them on various dates and she had acknowledged the receipt of payments in a diary, which has been marked as Ex.R1. However, the respondent had denied the handwriting found in Ex.R1 as well as the handwriting in Ex.C1. The application filed by the defendants 2 & 4 was contested by the respondent/plaintiff.

5.The trial Court, taking into consideration the case of both parties, while dismissing the application, found that the handwriting found in Ex.C1 cannot be taken as that of the respondent for the reason that the respondent herself had denied her handwriting in Ex.C1. When the respondent herself had denied her handwriting in Ex.C1, the handwriting found in Ex.R1 cannot be compared with the handwriting found in Ex.C1. Taking of all these aspects, the trial Court has rightly dismissed the application.

6.The present application has been filed by the revision petitioners/ defendants 2 & 4 to compare the signature found in Ex.R1 with the signature

found in Ex.C1. As already stated, since the handwriting found in Ex.C1 was not admitted by the respondent/plaintiff, the application was dismissed by the trial Court.

7.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

17.11.2016

To

1.The III Additional Subordinate Judge,
Coimbatore.

M.DURAIWAMY,J.
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